

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: NATIONAL COLLEGIATE ) Docket No. 13 C 9116  
ATHLETIC ASSOCIATION STUDENT- )  
ATHLETE CONCUSSION INJURY ) Chicago, Illinois  
LITIGATION, ) February 6, 2018  
 ) 9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiffs: HAGENS BERMAN SOBOL SHAPIRO, by  
MS. ELIZABETH A. FEGAN  
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SIPRUT PC, by  
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For Defendant NCAA: LATHAM & WATKINS, by  
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1 (Proceedings had in open court:)

2 THE CLERK: Case 13 C 9116, NCAA Student-Athlete  
3 Concussion Injury Litigation.

4 MS. FEGAN: Good morning, your Honor. Elizabeth Fegan  
5 on behalf of plaintiffs.

6 MR. McLAWHORN: Todd McLawhorn for plaintiffs.

7 MS. SPELLMAN: Johanna Spellman and Marc Klein for the  
8 NCAA.

9 THE COURT: Good morning.

10 So, Ms. Fegan, what's going on with this notice  
11 program?

12 MS. FEGAN: So in anticipation of the filing of the  
13 notice administrator's declaration last week just 24 hours  
14 before it was due, in lieu of sending us a declaration they  
15 advised us that they had discovered over the weekend several  
16 files from schools that it sounds like from an initial -- from  
17 the initial description we received from them, when they were  
18 transferring the names over into the notice database, the  
19 spreadsheet had several tabs. They pulled information from one  
20 tap, not all the tabs, that the schools had submitted.

21 As a result, as of today we are aware of four schools  
22 for whom notice is not complete. And that comprises  
23 approximately 13,000 unique class members. They have not done  
24 a full audit, which is part of what we've discovered over the  
25 last week, despite assurances to us that that had been done

1 after Frostburg.

2           We have asked them what it would take to do an audit  
3 of every single submission from every single school to ensure  
4 that all class members for whom we received information  
5 received direct notice. They have told us as of last night  
6 that they think it would take two weeks. They will do it at  
7 their own cost, and we are recommending, your Honor, that we  
8 strike the current dates and put this over for two weeks, that  
9 we can get the results of that audit, determine how much  
10 additional notice -- whether this is it or whether there is  
11 more than these four schools, and at that time recommend to you  
12 a further schedule.

13           THE COURT: So this audit, that would encompass all of  
14 the submissions that the notice administrator received from all  
15 the schools?

16           MS. FEGAN: Absolutely, even ones where they already  
17 assured us notice has gone out. We asked them to go back.  
18 Based on information and the way it was coming out to us, we  
19 are very uncomfortable with the way and the representations  
20 that have come to us before. And we want to avoid this  
21 problem.

22           THE COURT: This notice process has been --

23           MS. FEGAN: A mess.

24           THE COURT: -- quite frustrating. I understand why it  
25 took so long to get all the information from the various

1 schools because we are talking about hundreds of schools. But  
2 once all the information was received and once the subpoena  
3 process, and then once the information was received, I think I  
4 believe, I believe you believed too, that the notice  
5 administrator would then just go about sending out direct  
6 notice to everyone.

7           The Frostburg State incident seemed like an anomaly at  
8 the time. But it did set us back several months to provide --  
9 so that those class members can provide notice and be provided  
10 notice and have an opportunity to have their say and object to  
11 any of the settlement, as well as the fee petitions.

12           I must say it doesn't instill a lot of confidence at  
13 the moment in my mind with regard to the way that the notice  
14 administrator has gone about its job with regard to providing  
15 notice.

16           So as part of this audit, will there be some sort of  
17 written product that's produced as a result of the audit?

18           MS. FEGAN: Yes, your Honor. We've asked them so far  
19 already to put in writing for us what they have done, where the  
20 mistakes lied, what they're doing to correct that, and what  
21 this audit will entail. Once the audit is completed, we are  
22 going to have that put all into a declaration from them, as  
23 well as the results of the audit so that there is full  
24 transparency, both about what occurred along the way but also  
25 what they've done to correct it, so that we can all get some

1 confidence that the notice program is complete.

2 But we certainly share your misgivings and -- about  
3 where we stand today.

4 THE COURT: And you said the two weeks is the time by  
5 which the audit will be done? Or when do you think you will be  
6 able to submit the declaration?

7 MS. FEGAN: They have said that they could have the  
8 audit done within two weeks. My suggestion is perhaps then we  
9 build in an extra week in case the declaration comes late and  
10 we have questions, because we want to make sure that all of our  
11 questions are answered, which will hopefully anticipate the  
12 Court's concerns.

13 THE COURT: We have a status hearing in the  
14 single-sport single-school track of the MDL on March 1 at 2:00  
15 o'clock. So what I want is, I want the audit done by the 20th.  
16 I want the declaration to be filed by the 26th. We will set  
17 this case for further status on March -- let's see.

18 We have the March 1 hearing anyway. So we will keep  
19 that hearing. But I am going to set a status hearing as  
20 opposed to the final approval hearing, because we will have to  
21 wait to resolve this notice issue before the final approval can  
22 be given. And I want the notice administrator here, March 1 at  
23 2:00 o'clock, in case I have any further questions. And so a  
24 representative from the notice administrator can attest to all  
25 the work that's been done and certify to the Court in person

1 that the audit has been completed, and that direct mail has  
2 been sent out.

3 The reason why the notice program has delayed things  
4 is that I continue to believe that direct notice is one of the  
5 best ways for the class members to receive notice of the  
6 settlement and the status of these proceedings. Given the fact  
7 that we're talking about approximately 13,000 people, we are  
8 talking about a significant number of potential class members  
9 here that need to receive notice.

10 So given that, I will again be amenable, although  
11 reluctantly, to reset the fairness hearing to a future date  
12 that we will determine later. I will enter an order today  
13 striking that date and changing it to a status hearing. And  
14 then on March 1, I will go ahead and set another date for the  
15 final approval hearing.

16 Are there any other interim deadlines between now and  
17 then aside from the deadlines that may be triggered by this  
18 additional notice requirement that need to be extended?

19 MS. FEGAN: There are not, your Honor.

20 May I just ask for one clarification? You indicated  
21 that you wanted the notice administrator on March 1 to certify,  
22 explain that the audit is done and also that direct notice has  
23 been sent. Are you suggesting that what they find we begin  
24 that direct notice program to them? Or do you want us to come  
25 on March 1 with a proposal for how that notice program as to

1 the remainder of the schools will roll out?

2 THE COURT: I think that to the extent that notice can  
3 be sent out to the people that you have, the sooner the better.

4 MS. FEGAN: Great.

5 THE COURT: I just want certification both by way of  
6 affidavit with regard to what's going to take place and the  
7 plan and how long it's going to take, and the notice  
8 administrator to be here so that if I have any questions I can  
9 ask notice administrator about where things stand.

10 MS. FEGAN: Thank you.

11 THE COURT: All right? Okay. Thank you.

12 (Which were all the proceedings heard in this case.)

13 CERTIFICATE

14 I HEREBY CERTIFY that the foregoing is a true, correct  
15 and complete transcript of the proceedings had at the hearing  
16 of the aforementioned cause on the day and date hereof.

17  
18 /s/Alexandra Roth

3/1/2018

19 \_\_\_\_\_  
20 Official Court Reporter  
21 U.S. District Court  
22 Northern District of Illinois  
23 Eastern Division  
24  
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\_\_\_\_\_  
Date